



## COMMONWEALTH of VIRGINIA

### DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
FDP VIRGINIA, INC.  
FOR  
FDP BRAKES  
VPDES Permit Registration No. VAR052300**

#### SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and FDP Virginia, Inc., regarding FDP Brakes for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "CSCE" means comprehensive site compliance evaluation.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Facility" means FDP Brakes located at 1076 Airport Road, Tappahannock, Virginia.
10. "FDP" means FDP Virginia, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. FDP is a "person" within the meaning of Va. Code § 62.1-44.3.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES General Permit No. VAR05, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. FDP applied for registration under the Permit and was issued Registration No. VAR052300 on August 11, 2015.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational,

commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

16. "PRO" means the Piedmont Regional Office of DEQ, located in Richmond, Virginia.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-151-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "SWPPP" means Stormwater Pollution Prevention Plan.
21. "Va. Code" means the Code of Virginia (1950), as amended.
22. "VAC" means the Virginia Administrative Code.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.

#### SECTION C: Findings of Fact and Conclusions of Law

1. FDP owns and operates the Facility located at 1076 Airport Road, Tappahannock, Virginia, which discharges stormwater associated with industrial activity. FDP is a drum and disk brake manufacturing business that manufactures, packages, and ships brakes to numerous large automotive parts suppliers around the country.
2. The Permit allows FDP to discharge stormwater associated with industrial activity from the Facility to tributaries of the Rappahannock River, in strict compliance with the terms and conditions of the Permit.
3. The tributaries of the Rappahannock River are surface waters located wholly within the Commonwealth and are "state waters" under the State Water Control Law.
4. The Chesapeake Bay TMDL, which was approved by the EPA on December 29, 2010, addresses dissolved oxygen and submerged aquatic vegetation (SAV) impairments in the Chesapeake Bay and its tidal tributaries (including the Rappahannock) by allocating total

nitrogen, total phosphorus, and total suspended solids to point and nonpoint sources, as well as atmospheric deposition and natural sources, throughout the Bay watershed. All applicable, regulated industrial stormwater general permits were assigned aggregated wasteload allocations.

5. During a DEQ compliance inspection and file review conducted on February 7, 2017, DEQ staff documented the following compliance deficiencies with respect to the requirements of the Permit:
  - a. FDP failed to provide the Outfall 001 through Outfall 008 Benchmark Monitoring DMRs for January 1, 2016 through June 30, 2016 which was due at the DEQ's PRO on July 10, 2016.
  - b. FDP failed to provide the Outfall 001 through Outfall 008 Total Maximum Daily Load (TMDL) Waste Load Allocation DMRs for January 1, 2016 through June 30, 2016 which was due at the DEQ's PRO on July 10, 2016.
  - c. FDP failed to provide the Outfall 001 through Outfall 008 Benchmark Monitoring DMRs for July 1, 2016 through December 31, 2016 which was due at the DEQ's PRO on January 10, 2017.
  - d. FDP failed to provide the Outfall 001 through Outfall 008 TMDL Waste Load Allocation DMRs for July 1, 2016 through December 31, 2016 which was due at the DEQ's PRO on January 10, 2017.
  - e. Documentation of non-stormwater discharge evaluations was not available for review.
  - f. Documentation of quarterly visual examinations was not available for review.
  - g. Documentation of stormwater annual comprehensive site compliance evaluations was not available for review.
  - h. Records of routine site inspections were not available for review.
  - i. The SWPPP did not contain the following items: a site description, a current pollution prevention team, and a signed certification page.
6. On August 17, 2017, DEQ conducted a file review which revealed that FDP failed to provide the Outfall 001 through Outfall 008 Benchmark Monitoring and TMDL Waste Load Allocation DMR for January 1, 2017 through June 30, 2017 which was due at the DEQ's PRO on July 10, 2017.
7. Part 1.A.2.d.2 of the Permit requires FDP to conduct benchmark monitoring at least semi-annually.

8. Part I.B.7.b.1 of the Permit requires FDP to conduct Chesapeake Bay TMDL monitoring at least semi-annually.
9. Part II.C.1 and 2 of the Permit requires FDP to submit the results of the monitoring required by the Permit no later than the 10<sup>th</sup> day of the month after monitoring takes place and to report monitoring results on a DMR.
10. Part III.D.2.a of the Permit requires an annual outfall evaluation for non-authorized discharges and that documentation of the inspection be kept with the SWPPP.
11. Part I.A.1.a.1. of the Permit requires FDP to perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall.
12. Part III.E.3 of the Permit requires that a CSCE be conducted at least annually and a written report of the inspection be kept with the SWPPP.
13. Part III.B.5 of the Permit requires FDP to perform routine site inspections at least quarterly and to document the results of the inspections in the SWPPP.
14. Part III.B.1. of the Permit requires FDP to identify a pollution prevention team by name or title and list responsibilities of each individual in its SWPPP.
15. Part III.B.2 of the Permit requires FDP to include a site description in its SWPPP.
16. Part III.F.1. of the Permit requires FDP to sign the SWPPP in accordance with Part II.K.
17. PRO issued NOV No. 2017-04-P-0001 on April 18, 2017, for the violations noted in C(5) above.
18. PRO issued NOV No. 2017-08-P-0002 on August 17, 2017, for the violations noted in C(6) above.
19. On August 18, 2017, Department staff met with representatives of FDP to discuss the violations. The Outfall 001 through 008 Benchmark Monitoring and TMDL Waste Load Allocation DMRs were completed during the August 18, 2017 meeting, resolving violation C(6). During the meeting, FDP agreed to perform makeup monitoring to compensate for the missed TMDL monitoring, resolving violations C(5)(b) and (d).
20. Due to unexpected staff turnover, FDP was unable to locate many of the stormwater documents during the DEQ inspection, but was later able to locate most of the documents. FDP provided documentation of annual comprehensive site compliance evaluations for 2016 and 2017, resolving violation C(5)(g).
21. On August 25, 2017, FDP submitted the signed certification page and non-stormwater discharge evaluations to DEQ via email, resolving part of violation C(5)(i) and violation

- C(5)(e). On August 29, 2017, FDP submitted documentation of quarterly visual examinations for each outfall, resolving violation C(5)(f).
22. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
23. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
24. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
25. The Department has issued no coverage under permits or certificates to FDP other than VPDES Permit No. VAR05
26. Based on the results of February 7, 2017 inspection, the file reviews, and the meeting on August 18, 2017, the Board concludes that FDP has violated conditions Part I.A.1.a.1., Part I.A.2.d.2, Part I.B.7.b.1, Part II.C.1 and 2, Part III.B.5, Part III.B.2, Part III.B.1, Part III.F.1, Part III.D.2.a, and Part III.E.3 of the Permit as noted in paragraphs (c)(5) and (6) of this Order.
27. In order for FDP to complete its return to compliance, DEQ staff and representatives of FDP have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders FDP, and FDP agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$7,000 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
January 1, 2018	\$1,750 or balance
April 1, 2018	\$1,750 or balance
July 1, 2018	\$1,750 or balance
October 1, 2018	\$1,750

3. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or

more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in writing full payment by FDP. Within 15 days of receipt of such letter, FDP shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

4. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

5. FDP shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, FDP shall be liable for attorneys' fees of 30% of the amount outstanding.

#### SECTION E: Administrative Provisions

1. ✓ The Board may modify, rewrite, or amend this Order with the consent of FDP for good cause shown by FDP, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2017-04-P-0001 dated April 18, 2017 and NOV No. 2017-08-P-002 dated August 17, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, FDP admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. FDP consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FDP declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other

administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by FDP to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FDP shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. FDP shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FDP shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FDP. Nevertheless, FDP agrees to be bound by any compliance date which precedes the effective date of this Order.



11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after FDP has completed all of the requirements of the Order;
- b. FDP petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to FDP.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve FDP from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by FDP and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of FDP certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind FDP to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of FDP.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, FDP voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5 day of March, 2017.

  
Jefferson Reynolds, Enforcement Director  
Department of Environmental Quality

----- (Remainder of Page Intentionally Blank) -----

FDP Virginia, Inc. voluntarily agrees to the issuance of this Order.

Date: 11/22/17 By: [Signature] Plant Manager  
(Person) (Title)  
FDP Virginia, Inc.

Commonwealth of Virginia  
City/County of Essex

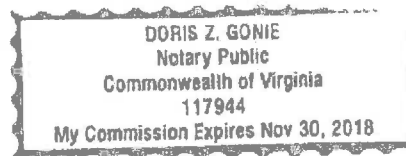
The foregoing document was signed and acknowledged before me this 22 day of  
November, 2017, by James Terrell who is  
Plant Manager of FDP Virginia, Inc., on behalf of the corporation.

[Signature]  
Notary Public

117944  
Registration No.

My commission expires: 11-30-18

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

1. FDP shall perform a total of three more sampling events for TMDL monitoring. In addition to performing a sampling event and submitting the DMRs for the July 1, 2017 through December 31, 2017 semi-annual monitoring period, FDP shall perform two rounds of TMDL monitoring within the January 1, 2018 through June 30, 2018 semi-annual monitoring period. If samples cannot be collected due to no rain events, FDP shall ensure documentation is available noting rainfall and when the outfalls were checked for discharges.
2. FDP shall submit copies of the results of routine inspections to DEQ until December 31, 2018. The routine inspections must be conducted quarterly, at a minimum.
3. FDP shall include a site description and the current pollution prevention team in its SWPPP by November 31, 2017 and shall submit a copy of those items to DEQ.
4. DEQ Contact

Unless otherwise specified in this Order, FDP shall submit all requirements of Appendix A of this Order to:

**Kristen Sadtler**  
**Stormwater Enforcement Manager**  
**VA DEQ –Central Office**  
**629 East Main Street**  
**Richmond, VA 23219**  
**804-698-4149**  
**Kristen.Sadtler@deq.virginia.gov**